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8 June 2015

**LANZAROTE COMMITTEE**

**Working Group on Trends in Child Sexual Exploitation and Abuse**

**1st meeting**

**Strasbourg, 18 May 2015**

**Issues discussed during the meeting**

Prepared by the Secretariat of the Lanzarote Committee

**Name of the Working Group, Chairperson and terms of reference**

The members of the Working Group suggested that the group should be called “Working Group on trends in child sexual exploitation and abuse”. It was emphasized that these trends were not necessarily new (e.g. live distant child abuse) and that the scope of the reflection to be carried out by the Working Group should not be limited to online child abuse and exploitation as this appeared to be too limited.

Mr Erik PLANKEN (Netherlands) was unanimously designated Chairperson of the Group.

**Identification of trends** **in child sexual exploitation and abuse**

The Working Group identified the following 7 trends to focus its reflection on:

* **Self-generated images and material**

It was pointed out that in UK the proper legal wording is “self-generated *indecent* images and material”. It was however stressed that the word “indecent” could be perceived as always being linked to morality issues.

Self-generated images and material (cover pictures, videos, audio material) are often made to be given to a boy-friend / girl-friend or possible partner. However the trust of the person generating the image is often abused (images may sometimes be hacked). Since some years, the Internet Watch Foundation has noticed an increase in the number of websites which had apparently been created specifically to display self-generated sexually explicit images and videos featuring young people. In 2013 the IWF identified a commercial child sexual abuse website offering the sale of self-generated sexual images and videos of young people.

Self-generated images and material are often used for sexual extortion (see the table below).

According to the EU Directive (art. 8§2), peers should be considered as children “close in age and degree of psychological and physical development or maturity”.

Sexting

Self-Generated Images and Material

 Online Grooming /

Online Grooming /

Solicitation

 Sexual

 Extortion

 Peer Offender

* **Sexual coercion and extortion**

Even if the word “sextortion” is often used, the Working Group was of the view that the wording “sexual extortion” was preferable, especially since most national legislations already cover the criminal offence of extortion. It might happen that in some legislations “extortion” is always necessarily linked to the taking of money or property through the use of violence or threats and not to other things, whilst the outcome of a sexual extortion may be to get additional material or sexual favours. This explains why the Working Group decided to use both “sexual coercion and extortion” to clearly show that this trend covers the taking of money but also extends to other favours. Additionally, it should be noted that the word “coercion” appears in the Lanzarote Convention (Article 18§b) whilst “extortion” does not. It was also agreed that “coercion” has a broader meaning than “extortion” (the latter being part of the former).

There is some inconsistency in responses to the distribution of self-generated indecent material (SGIM) by young people, and uncertainty in both the academic and law enforcement communities on how problematic behaviour of this nature should be identified and categorised. The relationship between the production of such material online and child sexual exploitation remains unclear. This intelligence gap merits additional research.

An expert group within Europol is currently working on the issue and will deliver a paper by the end of the year 2015 which the Working Group will take into account.

A practice is on the rise: criminals target young people on social media platforms, including dating sites (among them are children, contact them and create a feeling of confidence, ask for naked pictures and/or videos (link to self-generated images and material) and once they get them start the coercion / extortion.

* **Live distant child abuse and exploitation**

For an overview of what live distant child abuse is, refer to the report of the UN Special Rapporteur on the sale of children, child prostitution and child pornography (document A/HRC/28/56).

The live streaming of abuse for payment is no longer an emerging trend but an established reality. It is of particular concern in the context of emerging markets due to increasing Internet adoption there.

Live streaming can be a part of a sexual extortion process, although for the purpose of this document it should rather be considered as a separate activity, carefully arranged, involving money transfers in most of the cases. This criminal activity is based on members of networks who control access to the children. For financial gain, these persons offer homeless children or children from their own family for sexual abuse by individuals live in front of a camera in the EU, or other developed countries.

This trend is on the rise as a long distance manipulation. Live distant child abuse is often followed by a travel to meet the child in person to abuse him/her.

The real-time monitoring of streamed child abuse material is legally and technically challenging, including extended features such as broadcasts protected by passwords and extra layers of anonymity. Examination of the offender’s computer devices or other electronic media storage devices often results in no electronic evidence of the child sexual abuse being identified. It is believed that these particular offenders are not downloading, recording or storing images and videos during the offending to purposefully avoid detection by law enforcement agents.

Money transfer services are the most cited by law enforcement in relation to live web streaming for abuse. It is particularly difficult to estimate the extent of their misuse for the payment of child abuse material as the pattern of the transactions are low value transactions from senders with no apparent familiar links to the receivers, going even twice a week. In recent cases the majority of these payments were made on-line.

Payment companies can be active partners in the fight against such abuses.

* **Sex chatting / sexting**

As such, “sexting” (i.e. exchanging self-generated sexual images/material) is not a problem when it is limited to peer-to-peer contacts. In this context, teenagers use new language codes (abbreviations) as a kind of encrypted language between them for adults not to understand.

Grooming often starts with sex chatting but not necessarily and it is recognized that simply sex chatting could be harmful to the child.

The UK passed a [new law](http://www.legislation.gov.uk/ukpga/2015/9/section/67/enacted) very recently, in addition to the law on grooming, which states that it is now illegal for an adult to communicate sexually with a child under the legal age of consent (16) in view of the sexual gratification of the adult.

The Working Group noted that the explanatory report to the Lanzarote Convention states that: “*The negotiators felt that simply sexual chatting with a child, albeit as part of the preparation of the child for sexual abuse, was insufficient in itself to incur criminal responsibility. A further element was needed*.” (§157).

The Working Group was of the view that it should explore whether this should be reviewed.

* **Bad hosting**

There has been a marked increase in the abuse of legitimate hosting services for distribution of child abuse material. Such online services as cyber lockers are used by entrepreneurial offenders to distribute child abuse material for financial gain. It is advisable to monitor abuse of Affiliate/Rewards Programs and Pay-for-Premium Services;

The Working Group noted that both the Lanzarote Convention and the EU Directive link corporate liability rules to natural persons; hosting companies, as such, cannot therefore be held liable under these two instruments. The Working Group stated that the issue of liability of service providers should be considered, bearing in mind the
[E-Commerce Directive](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000L0031&from=FR). The Working Group agreed that there was a need to explore ways to enable companies to search for illegal content without this entailing the loss of their legal immunity. One way to counter this situation could be to use the data protection legislation against the hosting companies since child abuse images are personal data. Another way could be to put some kind of pressure on the hotlines to give the names of the companies concerned since they are aware of the “bad sites”.

* **Anonymity and encryption of data / use of darknet**

The Working Group considered that this trend is a big problem to be addressed since it complicates further the fight against sexual abuse and exploitation. It noted that it was almost impossible to trace offenders when they use services provided by the darknet, which occurs more and more often. The darknet is also used to collect money (through alternative modes of payments) and do the abuse; there is therefore a clear commercial scope which needs to be taken into consideration. The Working Group considered that the use of anonymity and encryption of data and of the darknet to abuse and/or exploit children should be considered as an aggravating circumstance.

* **Commercial child sexual exploitation**

This occurs when the most important factor for the offender is that of making money.

When there is commercial activity, in addition to sexual abuse and exploitation, there can be additional punishment.

In Recital 16 of the EU Directive 2011/93/EU member states are invited to consider providing for the possibility to impose financial penalties in addition to imprisonment, especially for those cases where the offences referred to in this Directive are committed with the purpose of financial gain. Moreover, in Article 11 of the operative part of the Directive member states are encouraged to take the necessary measures to ensure that their competent authorities are entitled to seize any instrumentalities and proceeds from the offences referred to in Articles 3, 4 and 5 of the Directive. It would be very interesting then to learn how these provisions are transposed in national law especially in the context of successful prosecutions of persons convicted for commercial distribution of child abuse material, which could serve as examples of good practice to be replicated throughout the European Union and beyond.

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**Other issues addressed for the Group to bear in mind while reflecting on the trends identified above**

The Working Group was of the view that the best interest of the child should prevail compared to other interests, such as the right to privacy. It would favour an approach following a child protection perspective. As an example, the Working Group referred to the fact that there is nearly always a hidden adult behind very young children posting sexualised videos of themselves. This phenomenon may not be considered as freedom of expression of the child. The issue is to find and prosecute this adult.

The Working Group also underlined the issues raised by the discrepancies among legislations on the legal age for sexual activities (age of consent) (ranging from 14 to 18). It was of the view that such differences constituted a significant potential limitation for an efficient fight against sexual exploitation and abuse since children are traveling more frequently and, above all, are very often in contact across borders (through the Internet).

Offenders may happen to be below 18: This issue needs to be considered in particular because the Convention does not appear to cover peer to peer sexual violence.

Proving the intention of the abuser is often a difficulty, especially when the child has produced self-generated images or in case of sex chatting. The Working Group agreed that it should bear this in mind as well. It should also not disregard the transnational dimensions of the trends (for example, exchange of information on sex offenders who travel).

Compensation: The Working Group agreed that it should to consider the issue whether children can sue for compensation (based on the US Supreme Court decision – see the results of the [research and thoughts](https://prezi.com/_x8nrwmt292g/2014-11-19-25-years-crc-legal-challenges-and-strategies-for-combating-online-sexual-violence-against-children/?utm_campaign=share&utm_medium=copy) on the legal challenges and strategies for combating online sexual violence against children of the Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children).

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**Working methodology and possible outcome of the reflection of the Group**

The Working Group decided that it would first check how best these trends could be tackled. In this regard, it would:

* look at whether the Lanzarote Convention and/or the EU Directive cover the trends or not;
* highlight any appropriate existing/possible prevention measure;
* suggest actions that might be taken to tackle the trend.

The following table could summarise the information shared and agreed upon during the Group’s reflection. The table has been filled in only partially so far (sexual coercion and extortion, and sex chatting / sexting) to illustrate its purpose.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Trends** | [**Lanzarote Convention**](http://www.coe.int/t/dghl/standardsetting/children/Text_Convention_en.asp) | [**EU Directive**](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0093) | **Prevention \*** | **Action to be taken \*\*** |
| Self-generated images and material |  |  |  |  |
| Sexual coercion and extortion | Art 18§1 b. combined with Art 20 | Art 3 (5) iii (sexual activities) + Art 4 (3) combined with Art 2 c (pornographic performances) + Art 4 (6) combined with Art 2 d (child prostitution) |  | Add a kind of panic button on mobile devices to report the sex chatting when going too far |
| Live distant child abuse |  |  |  |  |
| Sex chatting / sexting | No (see §157 explanatory report) | Art 3 (4)? (“engaging in sexual activities”) |  |  |
| Bad hosting |  |  |  |  |
| Anonymity and inscription of data |  |  |  |  |
| Commercial child sexual exploitation |  |  |  |  |

\*  The Working Group identified the following prevention measures which could apply to all trends: Awareness raising activities/education/empowerment of parents and teachers (in particular to inform that children can be targeted and become victims). It also agreed that with respect to awareness raising activities in particular it wanted to identify what works and not just list what exists.

\*\* The Working Group identified the following actions to be taken which could apply to all trends: Self-regulation by professionals (Google, Facebook, etc.); more criminal law answers; more cooperation between national police teams (because of the cross-borders factor).

**Practical matters:**

The Working Group considered that the participation of a representative of the European Commission in its meetings would be a real added value. It therefore decided that the European Commission should be specifically invited to its next meetings.

Next meeting: Tuesday 8 September 2015

A third meeting should be organized early 2016 to allow the Working Group to take into account in its outcome, the documents that are planned to be released only in December 2015 (report of the European Commission on the transposition of the EU Directive by member States; Europol and [Internet Watch Foundation](https://www.iwf.org.uk/) document on sexual extortion).